

ORDER NO. 1246

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Robert G. Taub

Port Kent Post Office  
Port Kent, New York

Docket No. A2012-57

ORDER AFFIRMING DETERMINATION

(Issued February 21, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012”.<sup>1</sup> The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly, the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

---

<sup>1</sup> United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 4, 2011, Elaine Smith (Petitioner) filed a petition with the Commission seeking review of the Postal Service's Final Determination to close the Port Kent, NY post office (Port Kent post office).<sup>2</sup> The Final Determination to close the Port Kent post office is affirmed.<sup>3</sup>

## II. PROCEDURAL HISTORY

On November 22, 2011, the Commission established Docket No. A2012-57 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.<sup>4</sup>

On November 21, 2011, the Postal Service filed the Administrative Record with the Commission.<sup>5</sup> The Postal Service also filed comments requesting that the Commission affirm its Final Determination.<sup>6</sup>

Petitioner filed a participant statement supporting the Petition.<sup>7</sup> In addition, on November 29, 2011, Jim Mori (Intervenor), a customer of the Port Kent post office, filed a letter with the Commission seeking to intervene in the appeal.<sup>8</sup>

---

<sup>2</sup> Petition for Review received from Elaine Smith regarding the Port Kent, NY post office 12975, November 4, 2011 (Petition).

<sup>3</sup> The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

<sup>4</sup> Order No. 991, Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 22, 2011.

<sup>5</sup> The Administrative Record is attached to the United States Postal Service Notice of Filing, November 21, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Port Kent, NY Post Office and Establish Service by Rural Route Service (Final Determination). See *also* United States Postal Service Notice of Filing a Replacement Page in the Administrative Record, December 29, 2011.

<sup>6</sup> United States Postal Service Comments Regarding Appeal, December 29, 2011 (Postal Service Comments).

<sup>7</sup> Participant Statement received from Elaine Smith, December 14, 2011 (Participant Statement).

### III. BACKGROUND

The Port Kent post office provides retail postal services and service to 190 post office box or general delivery customers. Final Determination at 2. No delivery customers are served through this office. The Port Kent post office, an EAS-11 level facility, provides retail service from 8:00 a.m. to 12:00 p.m. and 12:45 p.m. to 4:30 p.m., Monday through Friday, and 8:00 a.m. to 11:30 a.m. on Saturday. Lobby access hours are 8:00 a.m. to 4:45 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday. *Id.*

The postmaster position became vacant on August 29, 2009, when the Port Kent postmaster resigned. A non-career officer-in-charge (OIC) was installed to operate the office. Retail transactions average 14 transactions daily (13 minutes of retail workload). Post office receipts for the last 3 years were \$28,772 in FY 2008; \$24,124 in FY 2009; and \$22,682 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this office, the Postal Service anticipates savings of \$29,544 annually. *Id.* at 8.

After the closure, retail services will be provided by the Keeseville post office located approximately 4 miles away.<sup>9</sup> Delivery service will be provided by rural route service through the Keeseville post office. *Id.* The Keeseville post office is an EAS-18 level office, with retail hours of 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 11:30 a.m. on Saturday. *Id.* Three hundred eight (308) post office boxes are available. *Id.* The Postal Service will continue to use the Port Kent name and ZIP Code for customers who elect to have post office box delivery at the Keeseville post office. *Id.* at 3, Concern No. 7. Customers electing to close their post office box and begin street delivery would be required to change their address. *Id.*

---

<sup>8</sup> Notice of Intervention received from Jim Mori, November 29, 2011 (Notice of Intervention).

<sup>9</sup> *Id.* at 2. Google Maps estimates the driving distance between the Port Kent and Keeseville post offices to be approximately 4.2 miles (11 minutes driving time).

#### IV. PARTICIPANT PLEADINGS

*Petitioner.* Petitioner opposes the closure of the Port Kent post office. Petitioner contends that the Postal Service has failed to consider the effect that the closing will have on the community. Petition at 1. Specifically, Petitioner notes the difficulties that winter travel to Keeseville will impose on senior citizens. Petitioner also notes that Port Kent is a growing community, with potential to grow more in the future. *Id.* Petitioner proposes that rather than closing the Port Kent post office, the Postal Service could cut costs by closing one additional day each week or raise revenue by charging a fee to users of postal boxes. *Id.*

*Intervenor.* Intervenor also opposes the closure of the Port Kent post office. He contends that the Postal Service failed to adequately consider the effect of the closing on the community. Notice of Intervention at 1. Intervenor notes that the post office is the focal point of the Port Kent community, and as such, that it provides non-economic benefits to local residents. Moreover, Intervenor indicates that the post office has historical significance to the community because Elkanah Watson, Port Kent's founder and a Revolutionary War hero, also served as Port Kent's first postmaster. *Id.*

*Postal Service.* The Postal Service argues that the Commission should affirm its determination to close the Port Kent post office. Postal Service Comments at 2. The Postal Service believes the appeal raises two main issues: (1) the effect on postal services, and (2) the impact on the Port Kent community. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Port Kent post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the Port Kent post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;

- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact on the community; and
- expected financial savings.

*Id.* at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Port Kent community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has considered the effect that closing the Port Kent post office will have on the provision of postal services, the effect it will have on the Port Kent community, economic savings that will result from the closing, and the effect it will have on postal employees. *Id.* at 14.

*Public Representative.* The Public Representative did not file any responsive pleading in this docket.

## V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

#### A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in providing notice of its intent to close. On May 10, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Port Kent post office. Final Determination at 2. A total of 192 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 46 questionnaires were returned. *Id.* On May 19, 2011, Postal Service representatives were available during an open house at the Port Kent post office to address customer concerns. Forty-three (43) customers attended. *Id.*

The Postal Service posted the proposal to close the Port Kent post office with an invitation for comments at the Port Kent and Keeseville post offices from June 24, 2011 through August 25, 2011. *Id.* The Final Determination was posted at the same two post offices from September 28, 2011 through October 31, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

#### B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service

will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

*Effect on the community.* Port Kent, New York is an unincorporated community located in Essex County, New York. Administrative Record, Item No. 16, 18. The community is administered politically by the Supervisor of the Town of Chesterfield. Police protection is provided by the New York State Police Department. Fire protection is provided by the Keeseville Volunteer Fire Department. The residents of Port Kent generally travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Port Kent community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Port Kent post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 2-7.

Petitioner and Intervenor raise issues concerning the impact that the closing will have on the Port Kent community. *Id.* at 2, 7; Petition at 1; Notice of Intervention at 1. Petitioner claims that the Postal Service failed to account for the difficulties that winter travel to Keeseville will impose on senior citizens. Intervenor claims that the Postal Service failed to adequately account for the non-economic benefits that the post office provides as the focal point of the Port Kent community, and because of its historical connection to Port Kent's founding.

The Postal Service contends that it considered the impact that the closing of the post office will have on the Port Kent community. The Postal Service asserts that a community's identity derives from the interest and vitality of its residents and their use of the community's name. By permitting post office box customers to continue to use the Port Kent name and ZIP code in addresses, the Postal Service contends that it has

addressed the effect on the community through preservation of the community identity. Postal Service Comments at 9-10; see Final Determination at 3, Concern No. 7. The Postal Service asserts that citizens who are concerned about the loss of a gathering place and information center remain free to meet at other businesses, churches and residences in town. Final Determination at 7, Concern No. 2.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

*Effect on employees.* The Postal Service states that the Port Kent postmaster resigned on August 29, 2009 and that an OIC has operated the Port Kent post office since then. Final Determination at 2. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated, and that no other Postal Service employee will be adversely affected. *Id.* at 7, 9.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Port Kent post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

*Effective and regular service.* The Postal Service contends that it has considered the effect the closing will have on postal services provided to Port Kent customers. Postal Service Comments at 5. It asserts that customers of the closed Port Kent post office may obtain retail services at the Keeseville post office located 4 miles away and that delivery service will be provided by rural route service through the Keeseville post office. Final Determination at 2. Customers who have post office boxes at the Port Kent post office may obtain Post Office Box Service at the Keeseville post office, which has 308 boxes available. *Id.* The record also indicates that the Postal Service is considering installing a centralized box unit (CBU) and parcel lockers somewhere in the Port Kent community to offer 24-hour box access. *Id.* at 8. For customers choosing not to travel to the Keeseville post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 7. The Postal Service adds that most transactions do not require meeting the carrier at the mailbox. *Id.* at 7, 11.



Petitioner proposes that rather than closing the Port Kent post office, the Postal Service could cut costs by closing one additional day each week or raise revenue by charging a fee to users of postal boxes. The Postal Service acknowledges Petitioner's suggestions, but maintains that the focus is whether the Postal Service can provide effective and efficient service to the Port Kent community after closing the Port Kent post office. Postal Service Comments at 13. The Postal Service asserts that by using rural carrier service it can provide effective service to the Port Kent community in a more cost-effective manner than by maintaining the Port Kent postal facility and postmaster position. *Id.*

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

*Economic savings.* The Postal Service estimates total annual savings of \$29,544. Final Determination at 8. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$13,100) minus the cost of replacement service (\$27,835). *Id.* Although the Port Kent post office lease expires in 2015, it contains a 90-day termination clause. Administrative Record, Item No. 15.

The Port Kent post office postmaster resigned on August 29, 2009. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office may be separated from the Postal Service or relocated to another Postal Service facility. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; and Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Port Kent post office has been staffed by an OIC for approximately 2.5 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

## VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Port Kent post office is affirmed.<sup>10</sup>

*It is ordered:*

The Postal Service's determination to close the Port Kent, New York post office is affirmed.

By the Commission.

Shoshana M. Grove  
Secretary

---

<sup>10</sup> See footnote 3, *supra*.

## DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Port Kent post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster resigned on August 29, 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

In addition, the community is left without conclusive assurance of replacement service. The Record reflects that the Postal Service is considering installing a

centralized box unit and parcel lockers somewhere in the Port Kent Community. Final Determination at 8. However, as my colleagues and I have indicated previously, before the Postal Service withdraws nearby access to retail service, it should confirm its intent to implement replacement or substitute services. *Cf. Monroe, Arkansas*, Docket No. A2011-40 (Nov. 18, 2011) at 9 (“...the Postal Service never conclusively states that it will be installing CBUs or parcel lockers.”)

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Port Kent, New York and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

## DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since August 2009, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Port Kent post office and should be remanded.

Nanci E. Langley